

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

SETH ROBBINS, VERN COOLEY

Plaintiffs,

v.

PHILADELPHIA SPORTS CLUB

Defendant.

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CIVIL ACTION

NO. 05-2676

ORDER AND MEMORANDUM

ORDER

AND NOW, this 9th day of December, 2005, upon consideration of Defendant's Motion to Dismiss in Part Pursuant to Fed. R. Civ. P. 12(b)(6) (Document No. 6, filed June 28, 2005), Plaintiffs, Seth Robbins and Vern Cooley's Reply to Defendant's Fed. R. Civ. P. 12(b)(6) Motion for Partial Dismissal (Document No. 8, filed July 11, 2005), Plaintiffs, Seth Robbins and Vern Cooley's Brief in Opposition to Defendant's Fed. R. Civ. P. Rule 12(b)(6) Motion for Partial Dismissal (Document No. 9, filed July 20, 2005), and Reply Memorandum of Law in Further Support of Defendant's Partial Motion to Dismiss (Document No. 10, filed August 2, 2005), for the reasons set forth in the attached Memorandum, and good cause appearing, **IT IS ORDERED** that Defendant's Motion to Dismiss in Part Pursuant to Fed. R. Civ. P. 12(b)(6) (Document No. 6, filed June 28, 2005) is **GRANTED IN PART** and **DENIED IN PART**, as follows:

1. Defendant's Motion to Dismiss in Part Pursuant to Fed. R. Civ. P. 12(b)(6) is **GRANTED** with respect to plaintiffs' claims for punitive damages under the Pennsylvania

Human Relations Act;

2. Defendant's Motion to Dismiss in Part Pursuant to Fed. R. Civ. P. 12(b)(6) is **GRANTED** with respect to plaintiff Vern Cooley's claims under the Pennsylvania Human Relations Act and his claims of wrongful discharge, and the Complaint is **DISMISSED WITH PREJUDICE** as to Vern Cooley.

3. Defendant's Motion to Dismiss in Part Pursuant to Fed. R. Civ. P. 12(b)(6) is **DENIED** in all other respects.

IT IS FURTHER ORDERED that plaintiff Seth Robbins is **GRANTED LEAVE TO FILE** an amended complaint limited to the claim that he was regarded as having a disability within the meaning of the Pennsylvania Human Relations Act. The amended complaint shall be filed on or before December 23, 2005. One copy of the amended complaint shall be served on the Court (Chambers, Room 12613) when the original is filed.

IT IS FURTHER ORDERED that the caption of the case is **AMENDED** to read as follows:

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

SETH ROBBINS, Plaintiff	:	CIVIL ACTION
	:	
	:	NO. 05-2676
V.	:	
	:	
PHILADELPHIA SPORTS CLUB	:	
Defendant	:	

MEMORANDUM

I. BACKGROUND

Plaintiffs, Seth Robbins and Vern Cooley, were employed by defendant Town Sports International, Inc., doing business as the Philadelphia Sports Club. Robbins commenced work as a personal trainer on or about September 25, 2001. Compl. ¶ 3. Cooley commenced work as an assistant manager in March 2000. Id. ¶ 5.

On or about January 29, 2002, Robbins suffered an injury on the job while performing work duties. Id. ¶¶ 7-8. Robbins requested that defendant accommodate his injury. Id. ¶ 10. From October 2002 to March 2003, Robbins' work-related injury was covered by Pennsylvania's Worker's Compensation Act. Id. ¶ 9.

On or about February 23, 2003, Cooley allegedly heard that agents of defendant planned to unlawfully terminate Robbins in violation of the Pennsylvania Human Relations Act ("PHRA") and the anti-retaliation provision of Pennsylvania's Worker's Compensation law. Id. ¶ 12. Cooley also allegedly heard agents of defendant admit that they intended to prepare a false record of Robbins' poor job performance to facilitate the termination. Id. ¶ 13.

Defendant discharged Cooley on or about March 4, 2003, Cooley Aff., and discharged Robbins on or about June 4, 2003. Compl. ¶ 11.

Plaintiffs filed a complaint against defendant in the Philadelphia Court of Common Pleas on May 6, 2005. Plaintiffs allege that defendant violated: (1) Robbins' rights under the PHRA by regarding him as suffering from an actual or perceived disability, by failing to offer him reasonable accommodation, and by unlawfully terminating him; (2) Cooley's rights under the PHRA by unlawfully retaliating against him for opposing defendant's allegedly discriminatory

conduct, and by unlawfully terminating him; (3) Robbins' rights under the Worker's Compensation Act anti-retaliation provision; and (4) plaintiffs' rights under Pennsylvania state law's public policy exception to the at-will employment doctrine.

Defendant filed a Notice of Removal on June 6, 2005. Defendant filed the instant motion to dismiss in part under Federal Rule of Civil Procedure 12(b)(6) on June 28, 2005. Defendant argues that: (1) Robbins' PHRA claim should be dismissed; (2) Cooley's PHRA and wrongful discharge claims should be dismissed; and (3) plaintiffs cannot recover punitive damages under the PHRA.

II. ANALYSIS

The foregoing analysis sets forth the legal standard under Rule 12(b)(6), and then analyzes each claim raised in defendant's motion for partial dismissal.

A. Federal Rule of Civil Procedure 12(b)(6)

A motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) tests the legal sufficiency of a complaint. Conley v. Gibson, 355 U.S. 41, 45-46 (1957). In considering a motion to dismiss under Rule 12(b)(6), a court must take all well-pleaded facts in the complaint as true and view them in the light most favorable to plaintiffs. See Jenkins v. McKeithen, 395 U.S. 411, 421 (1969). However, claims in a complaint will be dismissed if "it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." Hishon v. King & Spalding, 467 U.S. 69, 73 (1984).

B. Because plaintiff Cooley failed to exhaust administrative remedies as required by the PHRA, his claims under the PHRA are dismissed.

The PHRA requires an aggrieved employee to exhaust administrative remedies by filing

claims with the Pennsylvania Human Relations Commission before seeking redress in state and federal courts. See 43 Pa. Cons. Stat. § 951 et seq. In Clay v. Advanced Computer Applications, 559 A.2d 917 (Pa. 1989), the Pennsylvania Supreme Court explained:

the statutory scheme [of the PHRA] would be frustrated if aggrieved employees were permitted to circumvent the Pennsylvania Human Relations Commission by simply filing claims in court. This would result in the very sort of burdensome, inefficient, time consuming, and expensive litigation that the PHRC was designed to avert, and would substantially undermine the proper role of the PHRC.

Id. at 919-20. See also Vincent v. Fuller Co., 616 A.2d 969, 974 (Pa. 1992) (“persons with claims that are cognizable under the Human Relations Act must avail themselves of the administrative process of the Commission or be barred from the judicial remedies authorized in Section 12(c) of the Act. This rule of ‘exhaustion of remedies’ has long been applied by the courts of this Commonwealth to claims under the Act.”).

In this case, plaintiff Cooley failed to plead that he exhausted administrative remedies under the PHRA, and his attorney admitted failure to exhaust these remedies during the preliminary pretrial conference on November 10, 2005. Because plaintiff Cooley failed to exhaust his administrative remedies as required by the PHRA, his claims under the PHRA are dismissed. Defendant’s motion to dismiss is granted as to Cooley’s claims under the PHRA.

C. Because plaintiff Cooley’s wrongful discharge claim was filed after the two-year statute of limitations expired, the wrongful discharge claim is dismissed.

Plaintiff Cooley concedes that he was an at-will employee of defendant. Cooley alleges wrongful discharge based upon a public policy exception to the general rule that an at-will employee may be fired for any reason. Specifically, Cooley argues that he was fired in retaliation for informing Robbins that defendant intended to illegal discharge Robbins. The Court concludes

that Cooley is barred from proceeding on this claim because the complaint was filed after the expiration of the two-year statute of limitations set forth in 42 Pa. C.S. § 5524.

Under Pennsylvania law, an “at-will” employment relationship can be terminated for almost any reason. See Geary v. U.S. Steel Corporation, 456 Pa. 171 (1974) (“[W]here the complaint [of an aggrieved employee] discloses a plausible and legitimate reason for terminating an at-will employment relationship and no clear mandate of public policy is violated thereby, an employee at will has no right of action against his employer for wrongful discharge.”).

Pennsylvania law recognizes several narrow public policy exceptions to the general rule of at-will employment.¹ Plaintiffs argue that Cooley’s discharge falls within such a public policy exception. In support of this argument, plaintiffs point to Shick v. Shirey, 552 Pa. 590 (1998), and Rothrock v. Rothrock Motor Sales, Inc., 883 A.2d 511 (Pa. Sept. 28, 2005).

In Shick v. Shirey, the Pennsylvania Supreme Court concluded that an at-will employee had stated a cause of action because he alleged discharge in retaliation for filing a worker’s compensation claim. 552 Pa. at 592. Likewise, in Rothrock v. Rothrock Motor Sales, Inc., the Pennsylvania Supreme Court recognized that an employee had stated a cause of action for wrongful discharge when he was fired for refusing to dissuade a subordinate employee from pursuing a worker’s compensation claim. 883 A.2d at 115. However, neither Shick nor Rothrock presented a statute of limitations issue.

The Court of Appeals for the Third Circuit has ruled that the statute of limitations for a

¹ See, e.g., Highhouse v. Avery Transportation, 443 Pa. Super. 120 (1995) (concluding that an at-will employee was wrongfully discharged for filing an unemployment compensation claim); Raykovitz v. K Mart Corp., 445 Pa. Super. 378 (1995) (same); Kroen v. Bedway Security Agency, 430 Pa. Super. 83 (1993) (holding that an at-will employee was wrongfully discharged for refusing to submit to a polygraph test).

claim of wrongful discharge under Pennsylvania law is two years. 42 Pa. C.S. § 5524.² See Mazzanti v. Merck & Co., Inc., 770 F.2d 34, 36 (3d Cir. 1985) (recognizing that the two-year statute of limitations applies to tortious interference with an employment contract). This statute of limitations applies even when an aggrieved employee alleges that her employer discharged her in violation of clearly mandated public policy. For example, in Monkelis v. Scientific Systems Services, 653 F. Supp. 680 (W.D. Pa. 1987), the Court held that although the plaintiff had stated an actionable claim within the public policy exception to the employment-at-will doctrine, it was dismissed because the applicable statute of limitations had run. Id. at 682-84. Likewise, in Minor v. Cyclops Corp., 32 Pa. D. & C. 3d 485 (Pa. Ct. Com. Pl. April 4, 1984), the Court held that even if plaintiff's claim of wrongful discharge claim fell within the narrow exception to the employment-at-will doctrine, the expiration of the statute of limitations barred the claim.³ Id. at 488-89. Based on this authority, this Court concludes that the two-year statute of limitation applies to Cooley's claim of wrongful discharge.

The statute of limitations for wrongful discharge generally begins to run when the aggrieved employee discovers that she has been injured by the conduct of her employer, not when the aggrieved employee learns that her injury gives rise to a legal claim for relief. In Oshiver v. Levin, Fishbein, Sedran & Berman, 38 F.3d 1380 (3d Cir. 1994), the Court of Appeals

² 42 Pa. C.S. § 5524(7) provides in relevant part: "The following actions and proceedings must be commenced within two years . . . any . . . action or proceeding to recover damages for injury to person or property which is founded on negligent, intentional, or otherwise tortious conduct or any other action or proceeding sounding in trespass, including deceit or fraud"

³ This Court finds the Minor Court's reasoning on the applicability of the statute of limitations instructive, but recognizes that the discussion in Minor v. Cyclops Corp. about the plaintiff's worker's compensation claim is undermined by subsequent developments in Pennsylvania law. See Shick v. Shirey; Rothrock v. Rothrock Motor Sales, Inc.

for the Third Circuit addressed this precise issue – the application of the discovery rule and the equitable tolling doctrine – in a discharge case.⁴ The Oshiver Court held that the statute of limitations generally begins to run upon the termination of employment. Id. at 1386-89. An employee’s subsequent realization that the termination was illegal affects the tolling analysis only if the employer misled the employee with regard to her cause of action, and only if this deception caused the employee’s non-compliance with the statute of limitations provision. Id.

In this case, Cooley alleges that he was terminated on March 4, 2003. He filed the complaint in which he asserts the wrongful discharge claim on May 6, 2005. The two-year statute of limitations required him to initiate the pending action on or before March 4, 2005. The complaint did not allege that the defendant misled Cooley with regard to his cause of action, nor did it allege that such deception caused Cooley’s non-compliance with the limitations provision. Because Cooley missed the statute of limitations by more than two months and did not allege that defendant’s deception caused the delay, his claim of wrongful discharge is time-barred. Accordingly, defendant’s motion to dismiss this claim is granted.

D. Because the PHRA bars plaintiffs from recovering punitive damages, plaintiffs’ claims for punitive damages under the PHRA are dismissed.

Plaintiffs claim punitive damages under the PHRA. In Hoy v. Angelone, 720 A.2d 745 (Pa. 1998), the Supreme Court of Pennsylvania concluded that “[i]n the absence of express statutory language or any further legislative guidance, we hold that punitive damages are not available under the [Pennsylvania Human Relations] Act.” Id. at 751. The ruling is unequivocal.

⁴ The Oshiver Court dealt with claims under Title VII and the PHRA. Although this case does not present claims under Title VII, this Court finds the Oshiver court’s reasoning about the discovery rule and equitable tolling in the context of wrongful discharge to be persuasive.

Because punitive damages are not available under the PHRA, defendant's motion to dismiss that claim pursuant to Rule 12(b)(6) is granted.

E. Plaintiff Robbins' claim under the PHRA survives defendant's motion to dismiss.

Plaintiff Robbins alleges that the defendant unlawfully terminated him because he was "regarded as having" a disability.⁵ Specifically, Robbins claims that the "defendant unlawfully regarded and perceived [him] as suffering from an actual or perceived disability, knee impairment and/or injury." Compl. ¶ 16. However, Robbins did not include in the complaint the factual basis for the claim that he was "unlawfully regarded and perceived" as suffering from a disability. Defendant seeks to dismiss Robbins' claim under the PHRA on the ground that Robbins did not adequately allege that he was disabled or that defendant regarded him as disabled.

The brevity of the complaint precludes the Court from determining whether Robbins has a viable claim under the PHRA. Accordingly, the Court grants Robbins leave to amend the complaint within fourteen days to set forth the factual basis for the claim that defendant regarded him as having a disability within the meaning of the PHRA, and defendant's motion to dismiss Robbins' claims under the PHRA is denied.

III. CONCLUSION

Because defendant's motion to dismiss is granted with respect to each of Cooley's claims,

⁵ The Americans with Disabilities Act (ADA) defines a "disability" as "(A) a physical or mental impairment that substantially limits one or more of the major life activities of [an] individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment." 42 U.S.C. § 12102(2). The Court of Appeals for the Third Circuit has held that claims under the ADA and the PHRA are coterminous. See Williams v. Philadelphia Housing Authority Police Dept., 380 F.3d 751, 761 n.6 (3d Cir. 2004); Taylor v. Phoenixville School Dist., 184 F.3d 296, 306 (3d Cir. 1999); Kelly v. Drexel Univ., 94 F.3d 102, 105 (3d Cir. 1996).

the Complaint is dismissed with prejudice with regard to this plaintiff. Plaintiff Robbins is granted leave to amend the Complaint to set forth the factual basis for his claim that defendant regarded him as having a disability within the meaning of the PHRA. Because Robbins' state law claims were not the subject of defendant's motion to dismiss, these claims are allowed to proceed.

BY THE COURT:

/s/ Honorable Jan E. DuBois
JAN E. DUBOIS, J.